



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>

November 20, 2019

In Reply Refer To:
1278-FOIA (640)
FOIA# 2018-00683

Chris Saeger
csaeger@westernvaluesproject.org
Western Values Project

Dear Mr. Saeger:

This letter is the final response to your Freedom of Information Act (FOIA) request, dated March 30, 2018. The tracking number is 2018-00683. In your letter, you asked for the following:

“I request access to and copies of all contracts the Bureau of Land Management (BLM) awarded to Environmental and Planning Management Solutions, Inc. (EPMSi) to review and process public comments received by BLM following the publication of the “Notice of Intent to Amend the Greater Sage-Grouse Resource Management Plan Revisions and Amendment(s).”

In our search for responsive documents, we have located the enclosed material. We are providing 418 pages for this release. Approximately 56 pages are being partially withheld under FOIA Exemption 5. This is a final release.

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” *5 U.S.C. § 552 (b) (5); see Nat'l Labor Relations Bd. v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges.

Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the “frank exchange of ideas on legal or policy matters” by ensuring agencies are not “forced to operate in a fish bowl.” *Mead Data Cent., Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) “assure that subordinates . . . will feel free to provide the decision-maker with their uninhibited opinions and recommendations;” (2) “protect against premature disclosure of proposed policies;” and (3) “protect against confusing the issues and misleading the public.”

Coastal States Gas Corp. v. United States Dep't of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980). The deliberative process privilege protects materials that are both pre-decisional and deliberative. The privilege covers records that “reflect the give-and-take of the consultative process”

and may include: “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Id.*

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both pre-decisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Information being partially redacted in accordance with the deliberative process includes emails among employees, and between employees and their supervisors, discussing personal opinions, recommendations, and proposed changes to draft documents. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

Ryan Witt, Bureau of Land Management (BLM) FOIA Officer, is responsible for this partial denial. Alexi Nathan, Attorney Advisor in the Office of the Solicitor, was consulted.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this request, please contact Lorraine Blanks, BLM WO FOIA Specialist, at (202) 912-7650 or via email at BLM_WO_FOIA@blm.gov.

Sincerely,

For Ryan Witt, Acting Chief
Division of Intergovernmental and
External Affairs